

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

GARY WAYNE WILLOUGHBY, §
§
Petitioner, §
§
v. § 2:18-CV-74-M
§
LORIE DAVIS, Director, §
Texas Department of Criminal Justice, §
Correctional Institutions Division, §
§
Respondent. §

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE,
and DENYING CERTIFICATE OF APPEALABILITY**

The United States Magistrate Judge entered Findings, Conclusions and Recommendation in this case, to which petitioner filed objections. The undersigned United States District Judge has reviewed *de novo* those portions of the Findings, Conclusions and Recommendation to which objection was made and reviewed the remaining Findings, Conclusions and Recommendation for plain error. Finding no error, the undersigned District Judge ACCEPTS the Findings, Conclusions and Recommendation of the Magistrate Judge.

Considering the record in this case and pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, and 28 U.S.C. § 2253(c), the Court DENIES petitioner a certificate of appealability. The Court accepts and incorporates by reference the Magistrate Judge's Findings, Conclusions and Recommendation filed in this case in support of its finding that petitioner has failed to show (1) that

reasonable jurists would find this Court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473,484 (2000).¹

In the event petitioner files a notice of appeal:

- petitioner will proceed *in forma pauperis* on appeal.
- petitioner will need to pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED this 10th day of May, 2018.



BARBARA M.G. LYNN
CHIEF JUDGE

¹ Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, as amended effective December 1, 2009, states:

- (a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.
- (b) **Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.